

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Request for Extension of Time to)
Construct Digital Facilities) File No. BEPCDT-20020225ACK
KNMT-DT, Portland, Oregon) ID No. 47704

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 2002

Released: September 16, 2002

By the Chief, Media Bureau:

1. The Media Bureau (the "Bureau") has before it a petition for reconsideration filed by National Minority T.V., Inc. ("NMTV") seeking reconsideration of the Bureau's letter of June 3, 2002, denying its request for an extension of time to construct the digital facilities for KNMT-DT and admonishing NMTV for failing to meet the May 1, 2002, construction deadline for DTV facilities. For the reasons stated below, we deny the petition.

2. In its petition, NMTV argues that the Bureau (1) misstated relevant facts and ignored the realities of DTV construction; (2) ignored NMTV's good faith efforts to meet the May 1, 2002, construction deadline; (3) failed to provide due process by not providing adequate notice of its intent to impose admonishments; and (4) failed to afford similarly situated parties similar treatment.

3. NMTV relies on essentially the same facts and arguments in support of its first two claimed grounds for reconsideration. On the first issue, NMTV claims that the Bureau misstated relevant facts when it concluded that NMTV had four years to make adequate arrangements to build its DTV facility. NMTV states that it was unreasonable for the Bureau to have expected completion of the station by the May 2002 deadline because the construction permit was not issued until August 29 2001, and the national DTV build out generated market constraints on the availability of engineers due to unusual demand. NMTV explains that its DTV construction also was delayed because of negotiations with the company that manages the tower on which NMTV proposed to operate. NMTV asserts that it is now moving forward with its DTV facilities, but does not provide any new date by which it intends to commence operations. NMTV contends that its actions and expectations in regard to its DTV construction were reasonable.

4. We find these arguments unpersuasive. To begin with, any delay in the approval of NMTV's DTV application arose from the proposals laid out in the application itself. DTV applications that were incomplete, that presented technical, legal, or financial questions, or that were mutually exclusive with other applications naturally took longer to resolve than applications that were grantable as filed. Furthermore, NMTV reasonably should have anticipated that there would be heavy demand on engineers

due to the nationwide DTV conversion and should have allowed for possible delays based on that workload. NMTV should also have allowed itself adequate time to negotiate with its tower manager. Therefore, NMTV's delays either arose from its own actions or from a situation which it easily could have foreseen.

5. NMTV next argues that the Bureau failed to give sufficient notice that it would admonish parties who failed to meet the DTV construction deadline. Admonishment is not an unusual or excessively punitive remedy, but rather is a penalty regularly imposed in a variety of contexts for failure to abide by Commission requirements.¹ In this context, NMTV failed to comply with a Commission imposed build-out requirement. Its apparent expectation that it would be permitted to do so without ramifications was baseless and mistaken. As a result, NMTV's contention that it was denied "due process" when it received an admonishment for failure to comply with the build-out requirement is without merit. NMTV should note, however, that if it continues to miss deadlines imposed by the Commission on its DTV build out, it will be subject to additional sanctions.

6. Finally, NMTV argues that similarly situated parties were not given similar treatment. Apparently, NMTV contends that it was treated unfairly because its DTV application was approved later than the applications of other parties. As noted above, any delay in processing NMTV's application resulted from the terms of NMTV's proposal, not from any disparate treatment of NMTV. We, therefore, reject NMTV's contention that it was treated differently than similarly situated parties.

7. ACCORDINGLY, IT IS ORDERED, THAT the petition for reconsideration filed by National Minority T.V., Inc. seeking reconsideration of the Bureau's letter of June 3, 2002, which denied NMTV's request for an extension of time to construct the digital facilities for KNMT-DT and admonished NMTV for failure to meet the May 1, 2002, construction deadline for digital television facilities, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

¹ See, e.g., *Davidson County Broadcasting*, 12 FCC Rcd 3375 (1997)(failure to comply with EEO rules); *Rainbow Broadcasting*, 14 FCC Rcd 11099 (1999)(failure to obtain Commission consent prior to replacing authorized antenna); *Black Media Broadcasting*, 16 FCC Rcd 3374 (2001)(broadcast of commercials on noncommercial station).